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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,990	09/28/2001	Jerry L. Carlson	98-HSP-245	4857

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EXAMINER

VAN PELT, BRADLEY J

ART UNIT	PAPER NUMBER
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3682

DATE MAILED: 12/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/965,990

Applicant(s)

CARLSON ET AL.

Examiner

Bradley J Van Pelt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: .

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re: claim 1, line 9, "a filter assembly disposed in series flow relationship" is inaccurate because disclosed filter assembly is in a parallel arrangement.

The term "disc-like portion" in claims 3, 4, and 6 is a relative term, which renders the claim indefinite. The term "disc-like portion" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Thoma et al. (USPN 4,843,818).

Re: claim 1, Thoma et al. disclose a hydrostatic transmission comprising a housing assembly (10), a variable displacement fluid pump and a fluid pressure operated motor disposed in said housing assembly; said fluid pump including a pump inlet (8) and a pump outlet (9), and said fluid motor including a motor inlet (9) and a motor outlet (86), and said housing assembly being in fluid communication with a source of low pressure fluid, said hydrostatic transmission defining a flow path including, in order, said pump inlet, said pump outlet, said motor inlet, and said motor outlet; said hydrostatic transmission further including a filter assembly (53) disposed in series flow relationship in said flow path; characterized by:

a) said housing assembly defining a recessed area (54, 12) intersecting said flow path at a location between said source of low pressure fluid and said pump inlet, the flow area of said recessed area being substantially greater than the flow area of said flow path;

b) said filter assembly comprising a piece of filter material disposed within said recessed area and attached directly thereto in a manner sufficient to maintain said piece of filter material within said recessed area during flow through said flow path.

Re: claim 2, Thoma et al. disclose said fluid pump comprising a radial piston pump and said fluid pressure operated motor comprising a radial piston motor.

Re: claim 3, Thoma et al. disclose said housing assembly comprises a pintle assembly (14) including a radially-extending disc-like portion (15) disposed axially between said radial piston pump and said radial piston motor.

Re: claim 4, Thoma et al. disclose said radially-extending disc like portion of said pintle assembly defining said recessed area.

Re: claim 6, Thoma et al. disclose said housing assembly including a radially-extending disc-like portion disposed axially between said fluid pump and said fluid motor; said disc-like portion defining said recessed area and defining a fluid passage disposed downstream of said recessed area and in fluid communication with said pump inlet.

Re: claim 7, Thoma et al. disclose a check valve (112) disposed in said fluid passage, the check valve is operable to permit flow through said filter assembly, then through said fluid passage and said check valve, and into said pump inlet (column 4, lines 4-24).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thoma et al. (USPN 4,686,829) in view of Suzuki (USPN 6,183,526). Thoma et al. disclose all of the instantly claimed invention according to claim 1, except said piece of filter material comprises a single piece of pleated filter paper, said piece of filter paper being attached within said recessed

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area by means of an adhesive material being in contact with both said piece of filter paper and said recessed area of said housing assembly.

Suzuki renders obvious said piece of filter material comprises a single piece of pleated filter paper (column 9, lines 16-17), said piece of filter paper being attached within said recessed area by means of an adhesive material (column 6, lines 36-39) being in contact with both said piece of filter paper and said recessed area of said housing assembly. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Thoma et al. by constructing the filter out of pleated paper and to include an adhesive for attachment to the housing for the purpose of removing impurities and to prevent the filter from coming down in the housing.

Allowable Subject Matter

8 Claim 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bosch (USPN 3,922,856), Faisandier (USPN 3,925,987), Bojas et al. (USPN 4,091,717), Thoma et al. (USPN 4,843,818), Woodley (USPN 5,136,845), and Johnson et al. (USPN 6,467,263).


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley J Van Pelt whose telephone number is (703)305-8176. The examiner can normally be reached on M-Th 7:00-4:30, 2nd F 7:00-3:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Bucci can be reached on (703)308-3668. The fax phone number for the organization where this application or proceeding is assigned is (703)305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-2168.

BJVP
December 12, 2002


DAVID A. BUCCI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600